

Attachment 5

2005 and 2007 are adequate. This finding will also be announced on EPA's conformity website: <http://www.epa.gov/otaq/transp/>, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Transportation conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the EPA may later be disapprove the SIP.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed the guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401-7671q.

Dated: May 14, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01-13412 Filed 5-25-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ND-001-0008; AD-FRL-6973-1]

Approval and Promulgation of State Implementation Plans; North Dakota; Notice of Potential Violations of the Prevention of Significant Deterioration Increments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: North Dakota has conducted a draft modeling analysis that shows numerous violations of the Class I prevention of significant deterioration (PSD) increments for sulfur dioxide (SO₂) in four Class I areas. Those Class

I areas include Theodore Roosevelt National Park, the Lostwood Wilderness Area, the Medicine Lakes Wilderness Area, and the Fort Peck Class I Indian Reservation. In a March 13, 2001 letter to EPA, the North Dakota Department of Health has committed to refine this modeling analysis and to subsequently adopt revisions to the State Implementation Plan (SIP) as may be necessary to address the increment violations that may be shown by the revised analysis. The purpose of this document is to inform the public of potential increment violations and of the commitments made by the North Dakota Department of Health to address the potential violations.

EFFECTIVE DATE: May 29, 2001.

ADDRESSES: Relevant documents are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2405. Interested persons should contact the person listed below to arrange for a mutually agreeable time to view these documents.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Air and Radiation Program, Environmental Protection Agency, Region VIII, (303) 312-6449.

SUPPLEMENTARY INFORMATION:

I. What Is the Purpose of This Document?

The purpose of this document is to inform the public of the commitments made by the North Dakota Department of Health regarding draft modeling studies that have shown violations of the PSD increment for SO₂ in four Class I areas. Those Class I areas include Theodore Roosevelt National Park and the Lostwood Wilderness Area, both of which are in North Dakota, and the Medicine Lakes Wilderness Area and the Fort Peck Class I Indian Reservation, both of which are within the State of Montana. In a March 13, 2001 letter to EPA, the North Dakota Department of Health has committed to refine this modeling analysis and to subsequently adopt revisions to its SIP as may be necessary to address the increment violations that may be shown by the revised modeling analysis. Specifically, the North Dakota Department of Health made the following commitments:

- By April 1, 2001—The State will develop an air quality modeling protocol.
- By January 2, 2002—The State will complete its modeling analysis (or within nine months from the time EPA completes its review of the modeling protocol).

- By February 1, 2002—The State will provide EPA with a summary of its modeling analysis.

- By August 1, 2003—The State will complete a SIP revision to resolve the increment issue (if the modeling analysis shows that the increment is exceeded).

Note that EPA is publishing the State's commitments in order to inform the public of the process that the State and EPA are following to address the increment violations modeled by the State. However, this document does not make the State's commitments legally binding.

EPA responded to the State in a letter dated March 28, 2001. Specifically, EPA stated that, in light of the State's March 13, 2001 commitment letter, we will not initiate formal action to call for a SIP revision to address these violations of the PSD increments for SO₂. We acknowledged that the State needs to refine the modeling analysis to better determine the appropriate control strategy(ies) to address the violations, and we will work with the State in its efforts. If the State does not meet its commitments, or if the State and EPA cannot agree on an acceptable modeling protocol or on acceptable control measures, we may decide to initiate a formal SIP call.

II. What Are the PSD Increments?

The purpose of the PSD program of the Clean Air Act (Act), 42 U.S.C. 7470-7479, is to ensure that the air quality in clean air areas remains clean and does not deteriorate to the level of the national ambient air quality standards (NAAQS). The mechanism created by Congress to meet this goal is the establishment of "PSD increments." These increments define the maximum allowable increases over baseline concentrations that are allowed in a clean air area for a particular pollutant. Any increase above this level indicates that significant deterioration of air quality has occurred. Because only emissions increases above the baseline concentration are considered in determining how much increment has been consumed, the amount of increment consumed can only be determined through air quality dispersion modeling, not through direct monitoring of ambient concentrations.

The Act provides for three different classes of air quality protection, to reflect varying levels of protection from significant deterioration in air quality. In the 1977 Clean Air Act Amendments, Congress designated all international parks, national wilderness areas and national memorial parks which exceed 5000 acres in size, and all national parks

which exceed 6000 acres in size as mandatory Class I areas. Congress also allowed States or Tribes to request redesignation of any area to Class I air quality protection status. Class I areas are to receive special protection from degradation of air quality, and the most stringent PSD increments apply in these areas.

The Class I increments for SO₂ are defined in section 163(b)(1) of the Act, 42 U.S.C. 7473(b)(1), as follows:

Annual arithmetic mean	2 ug/m ³
Twenty-four hour maximum	5 ug/m ³
Three-hour maximum	25ug/m ³

These increments are also promulgated in EPA's PSD regulations at 40 CFR 52.21(c). North Dakota has adopted these increments as state regulation in section 33-15-15-01.2.b. of the North Dakota Administrative Code, which EPA approved as part of the SIP on November 2, 1979 (44 FR 63102).

For any averaging period other than an annual averaging period, section 163(a) of the Act allows the increment to be exceeded during one such period per year. Otherwise, section 163 of the Act provides that the increments are not to be exceeded and that the SIP must contain measures assuring that the increments will not be exceeded. Section 110(a)(2)(D)(i)(II) of the Act, 42 U.S.C. 7410(a)(2)(D)(i)(II), further requires the SIP to include provisions prohibiting any source or other emitting activity within the State from emitting air pollution in amounts that will interfere with measures to be included in any other State's implementation plan to prevent significant deterioration of air quality. EPA's PSD regulations also provide that the SIP must be revised whenever EPA or the State determines that an applicable PSD increment is being violated. (See 40 CFR 51.166(a)(3).)

III. How Can I Obtain More Information on This Matter?

Copies of the State's March 13, 2001 letter and EPA's March 28, 2001 response can be obtained from the contact person listed above. A Background Document is also available, which discusses in greater detail the PSD requirements of the Act, the history of PSD increment violations in North Dakota Class I areas, and the State's draft modeling analysis.

This notice today informs the public and identifies the appropriate EPA regional office from which the public may gain further information and review the relevant documents pertaining to this North Dakota PSD increment issue.

Dated: April 20, 2001.

Jack W. McGraw,
Acting Regional Administrator, Region VIII.
[FR Doc. 01-13409 Filed 5-25-01; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-100171; FRL-6784-1]

DynCorp I & ET and Geologics; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide-related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to DynCorp I & ET and its subcontractor, Geologics, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). DynCorp I & ET and its subcontractor, Geologics, have been awarded a contract to perform work for OPP, and access to this information will enable DynCorp I & ET and its subcontractor, Geologics, to fulfill the obligations of the contract.

DATES: DynCorp I & ET and its subcontractor, Geologics, will be given access to this information on or before June 4, 2001.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the Federal Register listings at <http://www.epa.gov/fedrgstr/>.

II. Contractor Requirements

Under Contract No. 68-W0-1007, DynCorp I & ET and its subcontractor, Geologics, will perform the following based on the statement of work.

OPP develops data requirements and study guidelines that are used to assess the potential impact pesticides may have on human health and the environment. Before using these data for regulatory purposes, OPP must evaluate the studies to determine their adequacy and to guarantee that appropriate quality assurance (QA) procedures were carried out. In evaluating and performing services required under this statement of work, the contractor shall submit all relevant information used in developing conclusions or options to the cognizant Work Assignment Manager (WAM) for all projects for review and approval.

OPP has determined that access by DynCorp I & ET and its subcontractor, Geologics, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with DynCorp I & ET and its subcontractor, Geologics, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, DynCorp I & ET and its subcontractor, Geologics, are required to submit for EPA approval a security plan

Attachment 6



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

August 31, 2001

Mr. Jeff Burgess
North Dakota Department of Health
Environmental Health Section
1200 Missouri Ave.
Bismark, ND 58504-5264

Dear Jeff,

From recent discussions between our modeling staff members, I understand that Montana-Dakota Utilities (MDU) has contacted your department concerning the PSD permitting requirements for a large coal-fired power plant near Gascoyne, North Dakota. I also understand that your Department is in the process of developing guidance for the applicant on a modeling protocol for this project, and your staff has requested input from EPA on several issues. While EPA can provide an initial reaction to these issues here, as noted below in some cases these are unique circumstances, and we will need to confer with our headquarters counterparts to provide a final response. Thus, we expect to provide you with additional comments in a few weeks.

In the modeling protocol the applicant should commit to determining the maximum incremental impact of the source on nearby areas, and then compare the model predictions to the monitoring exemption levels contained in both the State and Federal PSD regulations at NDAC 33-15-15-01.4.d(3) and 40 CFR 51.166(i)(8), respectively. In our experience a 500 MW power plant is likely to have significant localized impacts on ambient levels of SO₂, NO₂, PM₁₀ and Mercury, even after application of BACT. If the modeled levels indeed exceed the exemption levels, the State should require at least some preconstruction monitoring. In modeling close-in impacts of the source the existing EPA guideline model ISC3 would meet the regulatory modeling requirements for determining monitoring exemption thresholds, PSD Class II increments, and NAAQS compliance for distances within 50 km of the source.

The precise modeling requirements for predicting Class 1 impacts cannot be defined at this time. The State and EPA are in the process of refining the Calpuff modeling analyses for the Class 1 areas where SO₂ increment violations have been predicted. These efforts will not be completed until base year emissions inventory issues have been resolved and the results of both studies reconciled. Thus, we don't expect that all the technical issues related to Class 1 increment modeling will be resolved until this winter.

In terms of the overall approach for the Class 1 modeling analysis in this permit, EPA's position is the same as that outlined in my June 25, 2001 letter to you on the cumulative increment analysis: 1) five years of meteorological data must be used, 2) no real-time pairing of emissions/meteorology data, 3) use of a consistent approach in calculating increment-consuming



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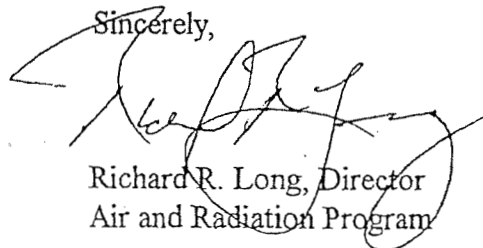
emissions between base year and current year. In addition, the new source must be modeled at full allowable emission rates. We believe that the requirements for PSD permit modeling are quite clear in the EPA modeling guidelines, and we will not repeat them in detail here (see 40 CFR 51.166(l) and NDAC 33-15-15-01.4.f).

The final question that comes up in the protocol is to define the level of impact, if any, that the proposed new source can have on existing PSD Class 1 increment violations, and still be issued a PSD permit. I understand that the State is considering an interpretation of language on Page C.52 of the EPA New Source Review Workshop Manual in providing guidance to the applicant. The State's interpretation is that a new PSD permit for this source could be issued if it is shown to have an insignificant impact on the Class 1 areas with predicted violations, provided the State addresses the cumulative increment violations through the SIP process.

Region 8 does not agree with this interpretation of the NSR Workshop Manual and we believe that it conflicts with the language in the Clean Air Act (CAA). We believe that language in Section 165(a)(3) of the CAA requires that no permit shall be issued when a proposed PSD source is found to "cause, or contribute to, air pollution in excess of any maximum allowable increase [i.e., PSD increment]..." The NSR Workshop Manual was written in 1990 before the issue of a Class 1 significance level was ever discussed. It is made clear in the NSR Workshop Manual that the significance levels only apply to Class II areas. Although proposed as a part of NSR reform, no Class 1 significance levels have ever been adopted in final form by EPA. Therefore, we believe any impact (not just one that is "significant") on a receptor in a Class 1 area that shows a violation of the PSD increment would be considered to contribute to that violation. Furthermore, Region 8 believes that, even if the impact is very small it is still contributing to a serious existing problem. As I have said in the past, we believe that in this situation the remedial SIP action must occur at the same time, or before, the permit is issued. For a very large source such as this, the PSD permitting process may take a full year or longer. This timing is not necessarily in conflict with the State's proposed schedule to make necessary revisions to the SIP to resolve the Class 1 violations. Depending on the scope of needed reductions, we believe that by the end of 2002 it may be feasible for the State to develop an overall remedial SIP plan that would allow additional growth such as the Gascoyne project.

Thank you for providing us the opportunity for input at this early stage of the PSD permitting process and we wish to continue to work cooperatively with the State on these difficult issues. As noted above, we will confer with headquarters on unique issues such as the significant impact language over the next few weeks for their interpretation. If you have any questions regarding our comments, please feel free to call me at (303) 312-6005.

Sincerely,



Richard R. Long, Director
Air and Radiation Program

cc: Chris Shaver, NPS

Sandra Silva, FWS

Deb Madison, Assiniboine and Sioux Tribes, Fort Peck Indian Reservation

Attachment 7



DRAFT

**DISPERSION MODELING ANALYSIS OF PSD CLASS I
INCREMENT CONSUMPTION IN NORTH DAKOTA AND
EASTERN MONTANA**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8 AIR AND RADIATION PROGRAM
999 18TH ST, SUITE 300
DENVER, COLORADO 80202**

January, 2002

5. Conclusion

In summary, EPA has applied the Calmet/Calpuff model to assess increment consumption in four Class I areas in North Dakota and eastern Montana. We based our analysis on long-standing EPA methodologies, including the use of two years of actual emissions data and five years of historical meteorology data. We employed the locally-developed inputs for the model used by the North Dakota Department of Health (NDDH) in their draft 1999 analysis. The results of our analysis show numerous violations of the Class I PSD increments for SO₂ in all four Class I areas assessed. Specifically, the number of violations in each Class I area are shown below:

Table 5-1: Summary of Class I Violations

	<u>3-hr Predictions</u> 2 nd High	<u>3-hr Predictions</u> # Violations	<u>24-hr Predictions</u> 2 nd High	<u>24-hr Predictions</u> # Violations
<i>Theodore Roosevelt National Park, South Unit</i>	31.4 µg/m ³	3	12.8 µg/m ³	9
<i>Theodore Roosevelt National Park, North Unit</i>	31.4 µg/m ³	2	10.5 µg/m ³	8
<i>Theodore Roosevelt National Park, Elkhorn Unit</i>	<25 µg/m ³	0	11.4 µg/m ³	5
<i>Lostwood Wilderness Area</i>	<25 µg/m ³	0	7.7 µg/m ³	9
<i>Medicine Lakes Wilderness Area</i>	25.9 µg/m ³	1	5.9 µg/m ³	2
<i>Fort Peck Indian Reservation</i>	<25 µg/m ³	0	6.3 µg/m ³	2
EPA's Class I SO ₂ Increments	25 µg/m ³		5 µg/m ³	

Note that, under EPA's PSD regulations, one exceedance of the short term (3-hour and 24-hour) increments is allowed per year, which is why Table 5-1 identifies the modeled second high concentration.

The PSD permitting program and the State's Implementation Plan, or SIP, are the mechanisms intended by Congress for protecting the PSD increments. Specifically, section 161 of the Clean Air Act and 40 CFR 51.166(a)(1) provide that the SIP must contain emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality. Section 163(a) of the Clean Air Act states that each SIP shall contain measures assuring that the maximum allowable increases over baseline concentrations shall not be

exceeded.

EPA's regulations require States to periodically review their plans for preventing significant deterioration. (See 40 CFR 51.166(a)(4).) If a State determines that an applicable increment is being violated, the State must revise the SIP to correct the violation as required by 40 CFR 51.166(a)(3). In addition, 40 CFR 51.166(a)(2) provides that, if a SIP revision would result in increased air quality deterioration over any baseline concentration, the SIP revision must include a demonstration that it will not cause or contribute to a violation of the applicable increments. Thus, there are several provisions of the Clean Air Act and EPA's regulations which require the protection of the PSD increments.

EPA performed this modeling analysis in order to provide a technical basis for defining the appropriate regulatory actions necessary to address any increment violations. EPA is taking comments from interested parties on this draft report for thirty days. We will consider all comments received before finalizing the results. This draft modeling report does not constitute final agency action; such action may be taken at some point in the future as may be necessary to address any PSD increment violations.

Attachment 8



**EPA COMMENTS ON NORTH DAKOTA DEPARTMENT OF HEALTH'S PROPOSED
DETERMINATION REGARDING THE ADEQUACY OF THE SIP TO PROTECT PSD
INCREMENTS FOR SULFUR DIOXIDE**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

May 24, 2002

Francis J. Schwindt and Douglas Bahr, Hearing Officers
Public Hearing on PSD Increment
North Dakota Department of Health
P.O. Box 5520
Bismark, North Dakota 58506-5520

Dear Messrs. Schwindt and Bahr:

This letter is to provide EPA's comments for the North Dakota Health Department's public hearing on the adequacy of the State Implementation Plan (SIP) to prevent significant deterioration of air quality in North Dakota. In the notice of hearing, the Department specifically solicited comments on the State's technical assessment and proposed determination that there are no violations of applicable Prevention of Significant Deterioration (PSD) increments for sulfur dioxide (SO₂) and, therefore, the SIP is adequate to prevent significant deterioration. The letter also responds to the State's request for EPA's legal analysis as it relates to the factual issues, and also addresses several of the items discussed in the State's legal analyses. EPA has reviewed the information, analysis, and issues related to the proposed determination and offers the comments below.

While this letter responds to North Dakota's request for comments, it is important to note that EPA is committed to keeping the lines of communication open on this matter and that discussions have been scheduled as soon as next week in our efforts to find resolution. For the past 30 years EPA and the North Dakota Department of Health have built a strong partnership based upon communications and understanding and we remain committed to continuing that partnership. We hope that these comments will help to clarify the basis for our position, which in turn will narrow our differences.

Background

In October of 1999, the State of North Dakota submitted to EPA for comment, a comprehensive modeling analysis of SO₂ increment consumption, using the approved Calpuff model, for several Class I areas that it completed in conjunction with a permit application by the Minnkota Power Cooperative to increase production, and consequently SO₂ emissions, at its Milton R. Young coal-fired power plant near Beulah, North Dakota.¹ The State conducted modeling for compliance with the Class I increments at all three units of Theodore Roosevelt National Park and Lostwood Wilderness Area, as well as the Medicine Lakes Wilderness Area in

¹ North Dakota Department of Health, Calpuff Class I Area Analysis for Milton R. Young Generating Station (May 24, 1999) (on file with EPA Region VIII, Denver, Colorado).

Montana and the Ft. Peck Indian Reservation Class I area. The results showed numerous violations of the SO₂ increment, both the 24-hour and 3-hour averaging times, in all four Class I areas, and the Minnkota Power Cooperative's proposed increase in emissions would contribute significantly to those violations.

In a February 1, 2000, letter EPA provided its review of North Dakota's modeling analysis.² Specifically, we stated that the Calpuff modeling methodology was technically sound and consistent with EPA's Guideline on Air Quality Models and the recommendations of the Interagency Workgroup on Air Quality Modeling³ (IWAQM) for evaluating Class I area impacts.⁴ In addition, we advised North Dakota that it should not issue the permit to the Minnkota Power Cooperative to increase production without requiring emission reductions to ensure that there would be no violations of the PSD increments. We also advised the State to correct the existing SO₂ increment violations.

In an April 14, 2000, letter North Dakota notified the Minnkota Power Cooperative that it would not proceed to issue a construction permit for the Milton R. Young station based on the facility's application to increase production.⁵ North Dakota's decision was based in large part on the facility's impact on the existing Class I SO₂ increment violations, as well as on projected violations of the SO₂ National Ambient Air Quality Standards (NAAQS) and Class II increments in other areas. The State then performed a subsequent Class I increment analysis under various scenarios and provided the results to EPA in an email dated April 7, 2000 and a memo dated April 19, 2000.⁶ The scenario of most interest to EPA was the analysis of the original results, excluding the increment-consuming emissions of the Minnkota Power Cooperative's Milton R. Young station. The results continued to indicate numerous violations of the Class I increment in all four Class I areas due to emissions from other large stationary sources in the area.

In January of 2001, we met with the North Dakota Department of Health to discuss the potential need for a SIP revision to correct the PSD increment violations. The State indicated the

² Letter from Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, to Jeffrey L. Burgess, Director, Division of Environmental Engineering, State of North Dakota Department of Health (February 1, 2000) (on file with EPA Region VIII, Denver, Colorado).

³ The Workgroup includes modeling experts from the U.S. Forest Service, the U.S. Fish and Wildlife Service, the National Park Service, and the U.S. Environmental Protection Agency.

⁴ United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long Range Transport Impacts, EPA-454/R-98-019 (December, 1998) (*available at* <http://www.epa.gov/scram001/7thconf/calpuff/phase2.pdf>) [hereinafter IWAQM Report].

⁵ Letter from Jeffrey L. Burgess, Director, Division of Air Quality, State of North Dakota Department of Health, to John T. Graves, Environmental Manager, Minnkota Power Cooperative, Inc. (April 14, 2000) (on file with EPA Region VIII, Denver, Colorado).

⁶ E-mail with attachments from Steve Weber, State of North Dakota Department of Health, to Kevin Golden and Vicki Stamper, Air and Radiation Program, EPA Region VIII (April 7, 2000) (on file with EPA Region VIII, Denver, Colorado). Memorandum from Steve Weber, State of North Dakota Department of Health, to Kevin Golden and Vicki Stamper, Air and Radiation Program, EPA Region VIII (April 19, 2000) (on file with EPA Region VIII, Denver, Colorado).

need to update and refine its modeling analysis before moving forward with examining potential measures to adopt into the SIP. Consequently, in a March 13, 2001 letter to EPA, the North Dakota Department of Health committed to update and refine its modeling analysis and to adopt revisions to its SIP as necessary to address any increment violations shown by the revised modeling analysis.⁷ Specifically, the North Dakota Department of Health agreed that it would:

- Develop an air quality modeling protocol by April 1, 2001.
- Complete its modeling analysis by January 2, 2002 (or within nine months from the time EPA completed its review of the modeling protocol).
- Provide EPA with a summary of its modeling analysis by February 1, 2002.
- Complete a SIP revision to resolve the increment issue (if the modeling analysis shows that the increment is exceeded) by August 1, 2003.

EPA published an information notice to inform the public of the commitments made by the State.⁸

In a letter dated March 28, 2001, we advised the State that, in light of its commitment letter, we would not initiate formal action to call for a SIP revision to address these violations of the PSD increments for SO₂.⁹ We acknowledged the State's desire to refine the modeling analysis to better determine the appropriate control strategies to address the violations, and we offered to work with the State in its efforts. We advised the State that if it were to not meet its commitments, or if the State and EPA were unable to agree on an acceptable modeling protocol or on acceptable control measures, we would consider initiating a formal SIP call.

On April 2, 2001 we received the modeling protocol from the State.¹⁰ The protocol was not acceptable to EPA because the State did not demonstrate that the protocol would be at least as protective of air quality as a protocol developed pursuant to longstanding EPA regulation and guidance for determining increment consumption. Furthermore, the State's protocol would underestimate the amount of air quality degradation that is occurring in the Class I airsheds. We had numerous discussions with the State in April and May to try and reach an agreement on the protocol. Some of the conversations included staff and managers from the EPA Headquarters office. EPA and the Department could not reach agreement, and we sent our comment letter to

⁷ Letter from Francis J. Schwindt, Chief, Environmental Health Section, State of North Dakota Department of Health, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII (March 13, 2001) (on file with EPA Region VIII, Denver, Colorado).

⁸ 66 Fed. Reg. 29127 (May 29, 2001).

⁹ Letter from Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, to Francis J. Schwindt, Chief, Environmental Health Section, State of North Dakota Department of Health (March 28, 2001) (on file with EPA Region VIII, Denver, Colorado).

¹⁰ Letter from Francis J. Schwindt, Chief, Environmental Health Section, State of North Dakota Department of Health, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII (with enclosure) (April 2, 2001) (on file with EPA Region VIII, Denver, Colorado).

the State on June 25, 2001¹¹. The letter expressed EPA's concern that the modeling would underestimate increment consumption because the State was proposing to model using an insufficient period of meteorology data and an inadequate characterization of source emissions. The State subsequently approached John Seitz, Director of the Office of Air Quality Planning and Standards, for advice on the matter. Mr. Seitz responded in a December 12, 2001, letter to the Department, in which he concurred with our June 25, 2001, letter.¹² During this time, the State also shared with us a draft letter it intended to send to the affected sources giving them the opportunity to provide their position concerning the baseline emission rates.¹³ The State subsequently performed the modeling outlined in the protocol.¹⁴ Despite the numerous assumptions that EPA believes would result in an underestimate of PSD increment consumption, the study still showed violations of the PSD increment in Theodore Roosevelt National Park and the Lostwood Wilderness Area.

When we could not reach agreement with the State on the modeling approach, EPA performed its own modeling. The draft report discussing the results of this modeling analysis was released on March 5, 2002, and the comment period closed on April 29, 2002. Although EPA's modeling analysis followed EPA regulations and procedures for most of the parameters, the EPA analysis contained several assumptions that to some extent supported the State's position. As a consequence, we received several comments during EPA's public comment period critical of those assumptions. We have received criticism from some commenters for being too lax (*e.g.*, for using 90th percentile emissions rather than maximum emission rates as required by the modeling guidelines, not using IWAQM regulatory default settings in the model. The maximum Class I increment concentrations would have increased by about 50%, and the number of violations nearly doubled, if the standard IWAQM regulatory defaults had been used in the modeling). Despite these less conservative assumptions, EPA's draft analysis still showed numerous violations in the four Class I areas, and the results were very similar to what the State showed in their original 1999 Calpuff analysis.¹⁵

On April 5, 2002 the State's draft modeling analysis and related documents became

¹¹ Letter with enclosure from Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, to Francis J. Schwindt, Chief, Environmental Health Section, State of North Dakota Department of Health (June 25, 2001) (on file with EPA Region VIII, Denver, Colorado).

¹² Letter from John S. Seitz, Director, Office of Air Quality Planning and Standards, EPA, to Francis J. Schwindt, Chief, Environmental Health Section, State of North Dakota Department of Health (December 12, 2001) (on file with EPA Region VIII, Denver, Colorado) [hereinafter Seitz letter].

¹³ Draft letter from Francis J. Schwindt, Chief, Environmental Health Section, State of North Dakota Department of Health (June 4, 2001) (on file with EPA Region VIII, Denver, Colorado).

¹⁴ North Dakota Department of Health, Calpuff Analysis of Current PSD Class I Increment Consumption in North Dakota and Eastern Montana using CEM Hourly Emission Rates Coupled with Concurrent Meteorology (March, 2002) (on file with EPA Region VIII, Denver, Colorado).

¹⁵ United States Environmental Protection Agency, Region VIII Air and Radiation Program, Denver, Colorado, Draft Dispersion Modeling Analysis of PSD Class I Increment Consumption in North Dakota and Eastern Montana (January 2002) (on file with EPA Region VIII, Denver, Colorado).

available on the Department's web site.¹⁶ In a letter dated April 29, 2002, Robert Roberts, Region VIII Regional Administrator, explained to Governor Hoeven that our office will continue to work with the Governor and the State staff to achieve our mutual goals.¹⁷ The April letter also committed that EPA Region VIII would work with the State to support the Governor's Vision 21 project and to help meet the Governor's goals for clean energy projects for the future; and also asked that the Governor's staff carefully consider EPA's comments and concerns in preserving the intent of the PSD program to protect the exceptional air quality of North Dakota.

It appears that the State's proposed modeling effort needs revision since the State's alternative methodologies have not been demonstrated to be more appropriate than the methodologies outlined in the Federal PSD program. As a result, it appears that this proposed modeling effort cannot be used to support the proposed conclusion in the hearing notice that the State Implementation Plan (or SIP) is adequate to prevent significant deterioration of air quality for affected Class I areas.

EPA's Response to the State's Legal Issues

EPA's legal analysis differs from the State on many of the issues presented in the State's legal analyses placed in the State's docket for this proceeding and the legal issues articulated at the State's public hearing.¹⁸ Although the scope of these written comments focuses primarily on EPA's concerns with the State's draft modeling analysis, EPA thinks it is important to respond to several of the issues presented in the State's analyses at this time. As appropriate, EPA may respond to the rest of the State's legal analysis at some point in the future, as well as supplement these comments and analyses provided herein.

EPA's PSD regulations require that the State Implementation Plan (SIP) provide for

¹⁶ North Dakota Department of Health, Environmental Health Section, Notice of Hearing Before the North Dakota Department of Health - Proposed Determination of the Adequacy of the North Dakota State Implementation Plan to Prevent Significant Deterioration (March 28, 2002); Prevention of Significant Deterioration Implementation Analysis and Sulfur Dioxide Increment Consumption Assessment Summary (April, 2002); Summary of Legal Procedure and Summary of Legal Issues relating to Administration of the Prevention of Significant Deterioration (PSD) Provisions of North Dakota's State Implementation Plan (SIP) (Undated), Role of Certifications of No Adverse Impact by Federal Land Managers in Setting PSD Increment Thresholds (MAALs) (Undated); Draft North Dakota Department of Health, Division of Air Quality, Calpuff Analysis of Current PSD Class I Increment Consumption in North Dakota and Eastern Montana Using Actual Annual Average SO₂ Emission Rates (April, 2002); Draft Prevention of Significant Deterioration - Sulfur Dioxide - Baseline Emission Rates (April, 2002) (*available at* <http://www.health.state.nd.us/psd/>).

¹⁷ Letter from Robert E. Roberts, Regional Administrator, EPA Region VIII, to the Honorable John Hoeven, Governor of North Dakota (April 29, 2002) (on file with EPA Region VIII, Denver, Colorado).

¹⁸ Draft Memorandum from Lyle Witham, Assistant Attorney General, State of North Dakota, to Francis Schwindt, Wayne Stenehjem and Robert Harms, State of North Dakota, "Legal Issues Relating to PSD Baseline and Increment Consumption" (January 31, 2002) (on file with the State of North Dakota) [hereinafter Witham Draft Memorandum]; Supplementary Written Comments to Draft Memorandum - "Legal Issues Relating to PSD Baseline and Increment Consumption," Prepared by Lyle Witham, Assistant Attorney General, State of North Dakota (May 6, 2002) (on file with the State of North Dakota) [hereinafter Supplementary Draft Witham Memorandum].

Table 2. Baseline Power Plant Annual Average Emissions Comparison

Source	ND Emissions (tons/yr)	Basis for ND Calculation	EPA Emissions (tons/yr)	Basis for EPA Calculation
Heskett Unit 1	1982	1976-1977 mine avg. S = 0.8%	1768	1976-1977 '76-'77 avg. S = 0.72%
Heskett Unit 2	4743	1976-1977 mine avg. S = 0.8%	4186	1976-1977 '76-'77 avg. S = 0.72%
Leland Olds Unit 1	12,494	1976-1977 mine avg. S = 0.65% (until 1993)	8551	1976-1977 '76-'77 avg. S = 0.45%
Leland Olds Unit 2	21,449	1977-1978 mine avg. S = 0.65% (until 1993)	13,094	1976-1977 '76-'77 avg. S = 0.45%
Stanton Unit 1	6754	1978-1979 mine avg. S = 0.69% (until 1992)	7176	1976-1977 '76-'77 avg S = 0.65%
MRY Unit 1	17,004	1978-1979 mine avg. S = 0.77%	13,383	1976-1977 '76-'77 avg. S = 0.58%
MRY Unit 2	19,175	1979-1980 mine avg. S = 0.80% 1.2 lb/mmBTU limit avg heat input	24,682	allowable limit
TOTAL	83,601		72,840	